



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0191]

RIN 1625-AA11

Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Columbus Day weekend regulated navigation area on Biscayne Bay in Miami, Florida. The amended regulated navigation area alters the boundaries of the area and expands the enforcement period. These regulations are necessary to protect the public during Columbus Day weekend; a period that has historically had a significant concentration of persons and vessels on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are: Required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area.

DATES: This rule will be effective [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] and will be enforced annually on Columbus Day weekend, starting at 12:01 p.m. on the Saturday before Columbus Day, through 2 a.m. on Monday (the Columbus Day holiday). Columbus Day is the federally recognized holiday occurring annually on the second Monday in October.

ADDRESSES: Documents indicated in this preamble are part of docket USCG-2012-0191. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535-7576, e-mail Mike.H.Wu@uscg.mil. If you have questions on viewing the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

I. Regulatory History and Information

On July 25, 2012, we published a Notice of Proposed Rulemaking (NPRM) entitled USCG-2012-0191 in the Federal Register (73 FR 2012-18151). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Our experience in administering the current Biscayne Bay Columbus Day regulated navigation area (RNA), established in 2011 and contained in 33 CFR 165.779, persuaded us that altering the dimensions of the RNA and slightly extending the hours of its enforcement is necessary to better protect the public. During this period, numerous vessels concentrate on the waters of Biscayne Bay during the high traffic hours of Columbus Day weekend. This rule is

necessary to protect the public on this congested waterway, including during Columbus Day 2012. Under these circumstances, it would be contrary to the public interest in maintaining safety in Biscayne Bay to delay the effective date of the final.

II. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend.

III. Discussion of Comments, Changes and the Final Rule

While no comments were receiving following the NPRM, the final rule has been modified by clarifying that Columbus Day weekend is the weekend preceding the second Monday of October.

This final rule revises the existing Biscayne Bay Columbus Day RNA in 33 CFR 165.779 by altering the RNA's boundaries and revising the enforcement period, extending

it by two hours into the early morning of Columbus Day. The revised RNA encompasses certain waters of Biscayne Bay between Rickenbacker Causeway Bridge and Coon Point on Elliot Key in Miami, Florida.

All vessels within the regulated navigation area are:

- (1) required to transit the area at no more than 15 knots;
- (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

The regulated navigation area is necessary to ensure the safety of the public during a time of heightened vessel traffic in the aforementioned area. Each year numerous recreation vessels, which include an annual sailing regatta, congregate in the waters of Biscayne Bay during Columbus Day weekend. The close proximity of numerous vessels within the proposed regulated navigation area during Columbus Day weekend poses a hazardous condition.

The regulated navigation area will result in the transiting of vessels at a reduced speed, thereby significantly reducing the threat of vessel collisions. Requiring vessels within the regulated navigation area to transit at no more than 15 knots will also enable law enforcement officials to identify, respond to, query, and stop operators who may pose a hazard to other vessels in

the area. Nothing in this regulation alleviates the requirement for vessel operators from complying with all other federal, state, and local laws in the area, including manatee slow speed zones.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) the regulated navigation area will be enforced for less than 2 days each year; (2) although, during the enforcement period, vessels are required to transit the area at no more than 15 knots, be subjected to control by the Coast Guard, and be required to

follow the instructions of all law enforcement vessels in the area, the regulated navigation area does not prohibit vessels from transiting the area; (3) vessels will still be able operate in surrounding waters that are not encompassed within the regulated navigation area without the restrictions imposed by the regulated navigation area; and (4) advance notification of the regulated navigation area will be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of

vessels intending to transit the regulated navigation area from 12:01 p.m. on Saturday until 2 a.m. on Monday on the weekend preceding the federally recognized holiday of Columbus Day occurring annually on the second Monday in October. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a regulated navigation area to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend, which will be enforced for less than 2 days each year. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS

AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.779 to read as follows:

§ 165.779 Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL.

(a) Regulated Area. The regulated navigation area encompasses all waters of Biscayne Bay between Rickenbacker Causeway Bridge and Coon Point, Elliot Key contained within an imaginary line connecting the following points: beginning at Point 1 in position 25°44'49"N, 80°12'04"W; thence southwest to Point 2 in position 25°30'00"N, 80°15'48"W; thence southeast to Point 3 in position 25°28'22"N, 80°15'00"W; thence east to Point 4 in position 25°28'23"N, 80°12'53"W; thence northeast to Point 5 in position 25°30'00"N, 80°12'06"W; thence west to Point 6 in position 25°30'00"N, 80°13'17"W; thence northwest to Point 7 in position 25°30'53"N, 80°13'21"W; thence northeast to Point 8 in position 25°43'57"N, 80°10'01"W; thence back to origin. All coordinates are North American Datum 1983.

(b) Definition. The term "designated representative"

means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) Regulations. (1) All vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(2) At least 48 hours prior to each enforcement period, the Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Broadcast Notice to Mariners. The Coast Guard will also provide notice of the regulated area by on-scene designated representatives.

(d) Enforcement Period. This rule will be in enforced annually on Columbus Day weekend, starting at 12:01 p.m. on the Saturday before Columbus Day, through 2:00 a.m. on

Monday (the Columbus Day holiday). Columbus Day is the federally recognized holiday occurring annually on the second Monday in October.

Dated: September 28, 2012.

William D. Baumgartner
Rear Admiral, U.S. Coast Guard
Commander, Seventh Coast Guard District

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